

AMENDED IN SENATE JULY 2, 2007

AMENDED IN ASSEMBLY JUNE 4, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 220

**Introduced by Assembly Member Bass
(Principal coauthor: Assembly Member Solorio)**

January 29, 2007

An act to add Chapter 9.6 (commencing with Section 3250) to Division 4 of Title 1 of the Government Code, relating to firefighters.

LEGISLATIVE COUNSEL'S DIGEST

AB 220, as amended, Bass. Firefighters.

The Public Safety Officers Procedural Bill of Rights Act prescribes various rights of public safety officers, as defined, with regard to representation, discrimination, discipline, and interrogation, as specified.

This bill would enact the Firefighters Procedural Bill of Rights Act to prescribe various rights of firefighters, defined as any firefighter employed by a public agency, including a firefighter who is a paramedic or emergency medical technician, with specified exceptions. The bill would prescribe rights related to, among others, political activity, interrogation, punitive action, and administrative appeals, *with specified requirements imposed upon the employing agency and the imposition of a civil penalty for a violation thereof. The bill would also specify that reimbursement of funds by the state shall be limited to the actual costs associated with the act, as specified.*

By adding to the duties of local agencies to comply with that act, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Firefighters are often called upon to render aid in hostile
4 emergency situations rife with conflict and confrontation.

5 (b) In providing lifesaving services to the public, firefighters
6 are subject to numerous job safety procedures and protocols, which
7 sometimes are compromised or altered, in a highly charged
8 atmosphere of critical incident stressors.

9 (c) Firefighters who trust their instincts in these volatile
10 emergency situations are deserving of due process rights and
11 protections should those circumstances arise.

12 (d) Mutual aid and automatic aid agreements entered into
13 between fire agencies throughout the state require firefighters to
14 respond to emergencies across political boundaries, therefore, the
15 rights and protections provided to firefighters under this act
16 constitute a matter of statewide concern.

17 (e) The effective protection of property and the safety of the
18 public depends upon the maintenance of reasonable and consistent
19 procedural protections applicable to all employers with respect to
20 the disciplinary process.

21 (f) It is necessary that this act be applicable to all firefighters,
22 as defined in subdivision (a) of Section 3251 of the Government
23 Code, wherever situated within the State of California, in order to
24 ensure that stable employment relations are continued throughout
25 the state, and to further ensure that effective services are provided
26 to all people of the state.

27 SEC. 2. Chapter 9.6 (commencing with Section 3250) is added
28 to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 9.6. FIREFIGHTERS

3250. This chapter shall be known, and may be cited, as the Firefighters Procedural Bill of Rights Act.

3251. For purposes of this chapter, the following definitions apply:

(a) "Firefighter" means any firefighter employed by a public agency, including, but not limited to, any firefighter who is a paramedic or emergency medical technician, irrespective of rank. However, "firefighter" does not include an inmate of a state or local correctional agency who performs firefighting or related duties or persons who are subject to Chapter 9.7 (commencing with Section 3300). This chapter does not apply to any employee who has not successfully completed the probationary period established by his or her employer as a condition of employment.

(b) "Public agency" has the meaning given that term by Section 53101.

(c) "Punitive action" means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

3252. (a) Except as otherwise provided in Chapter 9.5 (commencing with Section 3201), or whenever on duty or in uniform, no firefighter shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) A firefighter shall not be prohibited from seeking election to, or serving as a member of, the governing board of a school district, or any local agency where the firefighter is not employed, including, but not limited to, any city, county, city and county, or special district, or political subdivision thereof.

3253. When any firefighter is under investigation and subjected to interrogation by his or her commanding officer, or any other member designated by the employing department or licensing or certifying agency, that could lead to punitive action, the interrogation shall be conducted under the following conditions:

(a) The interrogation shall be conducted at a reasonable hour, at a time when the firefighter is on duty, unless an imminent threat to the safety of the public requires otherwise. If the interrogation does occur during off-duty time of the firefighter being interrogated, the firefighter shall be compensated for any off-duty time in accordance with the employer relations ordinance governing

1 ~~overtime compensation~~ *regular department procedures*. The
2 firefighter's compensation shall not be reduced as a result of any
3 work missed while being interrogated.

4 (b) The firefighter under investigation shall be informed, prior
5 to the interrogation, of the rank, name, and command of the officer
6 or other person in charge of the interrogation, the interrogating
7 officer, and all other persons to be present during the interrogation.
8 All questions directed to the firefighter under interrogation shall
9 be asked by and through ~~one interrogator~~ *no more than two*
10 *interrogators at one time*.

11 (c) The firefighter under investigation shall be informed of the
12 nature of the investigation prior to any interrogation.

13 (d) The interrogating session shall be for a reasonable period
14 taking into consideration the gravity and complexity of the issue
15 being investigated. The person under interrogation shall be allowed
16 reasonable breaks to attend to his or her own personal physical
17 necessities.

18 (e) (1) The firefighter under interrogation shall not be subjected
19 to offensive language or threatened with punitive action. A promise
20 of reward shall not be made as an inducement to answering any
21 question. ~~The~~ *The employer shall provide to, and obtain from, an*
22 *employee a formal grant of immunity from criminal prosecution,*
23 *in writing, before the employee may be compelled to respond to*
24 *incriminating questions in an interrogation. Subject to that grant*
25 *of immunity, a firefighter refusing to respond to questions or submit*
26 *to interrogations shall be informed that the failure to answer*
27 *questions directly related to the investigation or interrogation may*
28 *result in punitive action.*

29 (2) *The* employer shall not cause the firefighter under
30 interrogation to be subjected to visits by the press or news media
31 without his or her express written consent free of duress, and the
32 firefighter's photograph, home address, telephone number, or other
33 contact information shall not be given to the press or news media
34 without his or her express written consent.

35 (f) A statement made during interrogation by a firefighter under
36 duress, coercion, or threat of punitive action shall not be admissible
37 in any subsequent judicial proceeding, subject to the following
38 qualifications:

39 (1) This subdivision shall not limit the use of statements
40 otherwise made by a firefighter when the employing *fire*

1 department is seeking civil service sanctions against any firefighter,
2 including disciplinary action brought under Section 19572.

3 (2) This subdivision shall not prevent the admissibility of
4 statements otherwise made by the firefighter under interrogation
5 in any civil action, including administrative actions, brought by
6 that firefighter, or that firefighter's exclusive representative, arising
7 out of a disciplinary action.

8 (g) The complete interrogation of a firefighter may be recorded.
9 If a recording is made of the interrogation, the firefighter shall
10 have access to the recording if any further proceedings are
11 contemplated or prior to any further interrogation at a subsequent
12 time. The firefighter shall be entitled to a transcribed copy of any
13 notes made by a stenographer or to any reports or complaints made
14 by investigators or other persons, except those portions that are
15 otherwise required by law to be kept confidential. Notes or reports
16 that are deemed to be confidential shall not be entered in the
17 firefighter's personnel file. The firefighter being interrogated shall
18 have the right to bring his or her own recording device and record
19 any and all aspects of the interrogation.

20 (h) If, prior to or during the interrogation of a firefighter, it is
21 contemplated that he or she may be charged with a criminal
22 offense, he or she shall be immediately informed of his or her
23 constitutional rights.

24 (i) Upon the filing of a formal written statement of charges, or
25 whenever an interrogation focuses on matters that may result in
26 punitive action against any firefighter, that firefighter, at his or her
27 request, shall have the right to be represented by a representative
28 of his or her choice who may be present at all times during the
29 interrogation. The representative shall not be a person subject to
30 the same investigation. The representative shall not be required to
31 disclose, or be subject to any punitive action for refusing to
32 disclose, any information received from the firefighter under
33 investigation *for noncriminal matters*.

34 This section shall not be construed to apply to counseling,
35 instruction, or informal verbal admonishment by, or other routine
36 or unplanned contact with, a supervisor or any other firefighter.

37 (j) A firefighter shall not be loaned or temporarily reassigned
38 to a location or duty assignment if a firefighter in his or her
39 department would not normally be sent to that location or would

1 not normally be given that duty assignment *under similar*
2 *circumstances*.

3 3254. (a) A firefighter shall not be subjected to punitive action,
4 or denied promotion, or be threatened with that treatment, because
5 of the lawful exercise of the rights granted under this chapter, or
6 the exercise of any rights under any existing administrative
7 grievance procedure.

8 (b) Punitive action or denial of promotion on grounds other than
9 merit shall not be undertaken by any employing department or
10 licensing or certifying agency against any firefighter *who has*
11 *successfully completed the probationary period* without providing
12 the firefighter with an opportunity for administrative appeal.

13 (c) A fire chief shall not be removed by a public agency or
14 appointing authority without providing that person with written
15 notice, the reason or reasons for removal, and an opportunity for
16 administrative appeal.

17 For purposes of this subdivision, the removal of a fire chief by
18 a public agency or appointing authority, for the purpose of
19 implementing the goals or policies, or both, of the public agency
20 or appointing authority, or for reasons including, but not limited
21 to, incompatibility of management styles or as a result of a change
22 in administration, shall be sufficient to constitute “reason or
23 reasons.”

24 Nothing in this subdivision shall be construed to create a property
25 interest, if one does not otherwise exist by rule or law, in the
26 ~~position of that job of~~ fire chief.

27 (d) Punitive action or denial of promotion on grounds other than
28 merit shall not be undertaken for any act, omission, or other
29 allegation of misconduct if the investigation of the allegation is
30 not completed within one year of discovery by the employing *fire*
31 department or licensing or certifying agency. This one-year
32 limitation period shall apply only if the discovery of the act,
33 omission, or other misconduct occurred on or after January 1,
34 2008. If the employing department or licensing or certifying agency
35 determines that discipline may be taken, it shall complete its
36 investigation and notify the firefighter of its proposed disciplinary
37 action within that ~~year~~. *If year, except in any of the following*
38 *circumstances:*

1 (1) *If the firefighter voluntarily waives the one-year time period*
2 *in writing, the time period shall be tolled for the period of time*
3 *specified in the written waiver.*

4 (2) *If the act, omission, or other allegation of misconduct is also*
5 *the subject of a criminal investigation or criminal prosecution,*
6 *the time during which the criminal investigation or criminal*
7 *prosecution is pending shall toll the one-year time period.*

8 (3) *If the investigation is a multijurisdictional investigation that*
9 *requires a reasonable extension for coordination of the involved*
10 *agencies.*

11 (4) *If the investigation involves an employee who is*
12 *incapacitated or otherwise unavailable.*

13 (5) *If the investigation involves a matter in civil litigation where*
14 *the firefighter is named as a party defendant, the one-year time*
15 *period shall be tolled while that civil action is pending.*

16 (6) *If the investigation involves a matter in criminal litigation*
17 *in which the complainant is a criminal defendant, the one-year*
18 *time period shall be tolled during the period of that defendant's*
19 *criminal investigation and prosecution.*

20 (7) *If the investigation involves an allegation of workers'*
21 *compensation fraud on the part of the firefighter.*

22 (e) *If a predisciplinary response or grievance procedure is*
23 *required or utilized, the time for that response or procedure shall*
24 *not be governed or limited by this chapter.*

25 (f) *If, after investigation and any predisciplinary response or*
26 *procedure, the employing department or licensing or certifying*
27 *agency decides to impose discipline, that agency shall notify the*
28 *firefighter in writing of its decision to impose discipline within 30*
29 *days of its decision, but not less than 48 hours prior to imposing*
30 *the discipline.*

31 (g) *Notwithstanding the one-year time period specified in*
32 *subdivision (d), an investigation may be reopened against a*
33 *firefighter if both of the following circumstances exist:*

34 (1) *Significant new evidence has been discovered that is likely*
35 *to affect the outcome of the investigation.*

36 (2) *One of the following conditions exists:*

37 (A) *The evidence could not reasonably have been discovered*
38 *in the normal course of investigation without resorting to*
39 *extraordinary measures by the agency.*

1 (B) *The evidence resulted from the firefighter's predisciplinary*
2 *response or procedure.*

3 3254.5. An administrative appeal instituted by a firefighter
4 under this chapter shall be conducted in conformance with rules
5 and procedures adopted by the employing department or licensing
6 or certifying agency that are in accordance with Chapter 5
7 (commencing with Section 11500) of Part 1 of Division 3 of Title
8 2.

9 3255. A firefighter shall not have any comment adverse to his
10 or her interest entered in his or her personnel file, or any other file
11 used for any personnel purposes by his or her employer, without
12 the firefighter having first read and signed the instrument
13 containing the adverse comment indicating he or she is aware of
14 the comment. However, the entry may be made if after reading
15 the instrument the firefighter refuses to sign it. That fact shall be
16 noted on that document, and signed or initialed by the firefighter.

17 3256. A firefighter shall have 30 days within which to file a
18 written response to any adverse comment entered in his or her
19 personnel file. The written response shall be attached to, and shall
20 accompany, the adverse comment.

21 3256.5. (a) *Every employer shall, at reasonable times and at*
22 *reasonable intervals, upon the request of a firefighter, during usual*
23 *business hours, with no loss of compensation to the firefighter,*
24 *permit that firefighter to inspect personnel files that are used or*
25 *have been used to determine that firefighter's qualifications for*
26 *employment, promotion, additional compensation, or termination*
27 *or other disciplinary action.*

28 (b) *Each employer shall keep each firefighter's personnel file*
29 *or a true and correct copy thereof, and shall make the file or copy*
30 *thereof available within a reasonable period of time after a request*
31 *therefor by the firefighter.*

32 (c) *If, after examination of the firefighter's personnel file, the*
33 *firefighter believes that any portion of the material is mistakenly*
34 *or unlawfully placed in the file, the firefighter may request, in*
35 *writing, that the mistaken or unlawful portion be corrected or*
36 *deleted. Any request made pursuant to this subdivision shall include*
37 *a statement by the firefighter describing the corrections or*
38 *deletions from the personnel file requested and the reasons*
39 *supporting those corrections or deletions. A statement submitted*

1 *pursuant to this subdivision shall become part of the personnel*
2 *file of the firefighter.*

3 *(d) Within 30 calendar days of receipt of a request made*
4 *pursuant to subdivision (c), the employer shall either grant the*
5 *firefighter's request or notify the officer of the decision to refuse*
6 *to grant the request. If the employer refuses to grant the request,*
7 *in whole or in part, the employer shall state in writing the reasons*
8 *for refusing the request, and that written statement shall become*
9 *part of the personnel file of the firefighter.*

10 3257. (a) A firefighter shall not be compelled to submit to a
11 lie detector test against his or her will.

12 (1) Disciplinary action or other recrimination shall not be taken
13 against a firefighter refusing to submit to a lie detector test.

14 (2) No comment shall be entered anywhere in the investigator's
15 notes or anywhere else that the firefighter refused to take, or did
16 not take, a lie detector test.

17 (3) Testimony or evidence to the effect that the firefighter
18 refused to take, or was subjected to, a lie detector test shall not be
19 admissible at a subsequent hearing, trial, or proceeding, judicial
20 or administrative.

21 (b) For the purpose of this section, "lie detector" means a
22 polygraph, deceptograph, voice stress analyzer, psychological
23 stress evaluator, or any other similar device, whether mechanical
24 or electrical, that is used, or the results of which are used, for the
25 purpose of rendering a diagnostic opinion regarding the honesty
26 or dishonesty of an individual.

27 3258. A firefighter shall not be required or requested for
28 purposes of job assignment or other personnel action to disclose
29 any item of his or her property, income, assets, source of income,
30 debts, or personal or domestic expenditures, including those of
31 any member of his or her family or household, unless that
32 information is otherwise required to be furnished under state law
33 or obtained pursuant to court order.

34 3259. A firefighter shall not have his or her locker or other
35 space for storage that may be assigned to him or her searched
36 except in his or her presence, or with his or her consent, or unless
37 a valid search warrant has been obtained *or unless he or she has*
38 *been notified that a search will be conducted.* This section shall
39 apply only to lockers or other space for storage that are owned or

1 leased by the employing department or licensing or certifying
2 agency.

3 3260. (a) It shall be unlawful for any employing department
4 or licensing or certifying agency to deny or refuse to any firefighter
5 the rights and protections guaranteed by this chapter.

6 (b) The superior court shall have initial jurisdiction over any
7 proceeding brought by any firefighter against any employing
8 department or licensing or certifying agency for alleged violations
9 of this chapter.

10 (c) (1) If the superior court finds that the employing department
11 or licensing or certifying agency has violated any of the provisions
12 of this chapter, the court shall render appropriate injunctive or
13 other extraordinary relief to remedy the violation and to prevent
14 future violations of a like or similar nature, including, but not
15 limited to, the granting of a temporary restraining order or
16 preliminary or permanent injunction prohibiting the employing
17 department or licensing or certifying agency from taking any
18 punitive action against the firefighter.

19 (2) *If the court finds that a bad faith or frivolous action or a*
20 *filing for an improper purpose has been brought pursuant to this*
21 *chapter, the court may order sanctions against the party filing the*
22 *action, the party's attorney, or both, pursuant to Sections 128.6*
23 *and 128.7 of the Code of Civil Procedure. Those sanctions may*
24 *include, but not be limited to, reasonable expenses, including*
25 *attorney's fees, incurred by a fire department as the court deems*
26 *appropriate. Nothing in this paragraph is intended to subject*
27 *actions or filings under this section to rules or standards that are*
28 *different from those applicable to other civil actions or filings*
29 *subject to Section 128.6 or 128.7 of the Code of Civil Procedure.*

30 (d) *In addition to the extraordinary relief afforded by this*
31 *chapter, upon a finding by a superior court that a fire department,*
32 *its employees, agents, or assigns, with respect to acts taken within*
33 *the scope of employment, maliciously violated any provision of*
34 *this chapter with the intent to injure the firefighter, the fire*
35 *department shall, for each and every violation, be liable for a civil*
36 *penalty not to exceed twenty-five thousand dollars (\$25,000) to*
37 *be awarded to the firefighter whose right or protection was denied*
38 *and for reasonable attorney's fees as may be determined by the*
39 *court. If the court so finds, and there is sufficient evidence to*
40 *establish actual damages suffered by the firefighter whose right*

1 *or protection was denied, the fire department shall also be liable*
2 *for the amount of the actual damages. Notwithstanding these*
3 *provisions, a fire department may not be required to indemnify a*
4 *contractor for the contractor's liability pursuant to this subdivision*
5 *if there is, within the contract between the fire department and the*
6 *contractor, a "hold harmless" or similar provision that protects*
7 *the fire department from liability for the actions of the contractor.*
8 *An individual shall not be liable for any act for which a fire*
9 *department is liable under this section.*

10 3261. Nothing in this chapter shall in any way be construed to
11 limit the ability of any employing department, licensing or
12 certifying agency, or any firefighter to fulfill mutual aid agreements
13 with other jurisdictions or agencies, and this chapter shall not be
14 construed in any way to limit any jurisdictional or interagency
15 cooperation under any circumstances where that activity is deemed
16 necessary or desirable by the jurisdictions or agencies involved.

17 3262. The rights and protections described in this chapter shall
18 only apply to a firefighter during events and circumstances
19 involving the performance of his or her official duties.

20 *SEC. 3. Any subvention of funds to reimburse a local agency*
21 *or a school district for the costs mandated by the state pursuant*
22 *to Chapter 9.6 (commencing with Section 3250) of Division 4 of*
23 *Title 1 of the Government Code shall be limited to the actual costs*
24 *directly associated with the new program or higher level of service*
25 *required by this chapter. A local agency or school district may not*
26 *be reimbursed for the costs of existing, similar protections and*
27 *procedures required for investigations and interrogations of*
28 *firefighters pursuant to regulation, rule, or ordinance of the local*
29 *agency or school district, or pursuant to a memorandum of*
30 *understanding between the local agency or school district and a*
31 *recognized employee organization.*

32 ~~SEC. 3.~~

33 *SEC. 4.* If the Commission on State Mandates determines that
34 this act contains costs mandated by the state, reimbursement to
35 local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.